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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052307
Party	Plaintiff Austin Precision Products, Inc. d/b/a LaRue Tactical
Correspondence Address	GAIL TAYLOR RUSSELL TAYLOR RUSSELL & RUSSELL, P.C. 10601 FM 2222, BUILDING R, SUITE 12 AUSTIN, TX 78730 UNITED STATES gtrussell@russell-law.com
Submission	Other Motions/Papers
Filer's Name	Gail Taylor Russell
Filer's e-mail	gtrussell@russell-law.com
Signature	/Gail Taylor Russell/
Date	05/10/2010
Attachments	Opposition to Registrants Motion to Suspend 3385512.pdf (4 pages)(26418 bytes)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3385512

Austin Precision Products Inc.,	:	
d/b/a LaRue Tactical,	:	
	:	
Petitioner,	:	
	:	
against	:	Cancellation No. 92052307
	:	
Richard E. Swan,	:	
	:	
Registrant	:	

OPPOSITION TO REGISTRANT’S MOTION FOR SUSPENSION OF PROCEEDINGS

Petitioner Austin Precision Products, Inc., d/b/a LaRue Tactical ("LaRue Tactical" or "Petitioner") hereby files this opposition to the Motion for Suspension of Proceedings ("Motion for Suspension") which was filed by Registrant on May 4, 2010 and served on Petitioner by First Class Mail.

1. Registrant filed the Motion for Suspension pursuant to 37 CFR § 2.117 and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") Chapter 510.02 (a). Registrant requested that the current cancellation proceeding be suspended pending a final determination in a civil litigation action pending in the United States District Court for the District of Massachusetts, Civil Action No. 1:09-CV-10034 (the "Civil Action")¹. In its Motion for Suspension, Registrant claims that Registrant has sued Petitioner for infringement of US Trademark Registration No. 3385512 ("Reg. No. 3385512") and that the pending Civil Action will have a direct bearing on the cancellation proceeding for Reg. No. 3385512.

¹ See the Civil Action original complaint, answer and counterclaims and second amended complaint, second amended answer and counterclaims attached to Registrant’s Motion for Suspension of Proceedings filed on May 4, 2010.

2. The suspension of proceedings in the United States Patent and Trademark Office is governed by 37 CFR § 2.117 (*Suspension of Proceedings*) which states:

(a) Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

(b) Whenever there is pending before the Board both a motion to suspend and a motion which is potentially dispositive of the case, the potentially dispositive motion may be decided before the question of suspension is considered regardless of the order in which the motions were filed.

(c) Proceedings may also be suspended, for good cause, upon motion or a stipulation of the parties approved by the Board.

3. 37 CFR §2.117 (a) is clear as to the requirements for the granting of the suspension of TTAB proceeding: (1) the party or parties in the Board proceeding and the civil action must be the same party or parties engaged in the civil action and (2) the civil action may have a bearing on the case. In accordance with 37 CFR §2.117 (a) for proceedings to be suspended, both requirements must be met.

4. Pursuant to 37 CFR §2.117 (a) and TBMP Chapter 510.02 (a), Petitioner objects to Registrant's Motion for Suspension on the grounds that the parties engaged in the Civil Action are not the same as the parties to the pending cancellation as is clearly required by the applicable statute. While Petitioner is a party to both cases, the Civil Action has been brought by Atlantic Research Marketing Systems, Inc. ("A.R.M.S."), a Massachusetts corporation which is not a party to the cancellation proceeding for Reg. No. 3385512.² The Registrant in this cancellation proceeding is Richard E. Swan, an individual. Therefore, Registrant's statement in its Motion for Suspension that "Registrant has sued Petitioner for infringement of Trademark Registration No.

² Registrant cites *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992) in support of its Motion for Suspension however, in the cited case, in that case the parties in both the civil action and the TTAB proceeding are identical.

3385512”³ is not correct, rather the corporate entity A.R.M.S. has sued Petitioner. The Civil Action documents are clear: Registrant (Richard E. Swan) is not a party to the Civil Action.

5. Petitioner files this Opposition to Registrant’s Motion for Suspension of Proceedings within the twenty day time period for filing a brief in response to a motion as provided by TBMP Chapter 502.02 (b).⁴

WHEREFORE, Petitioner requests that the TTAB consider this Opposition to Registrant’s Motion for Suspension. Further, given that the parties to the Civil Action and the cancellation proceeding for Reg. No. 3385512 are not the same as required by 37 CFR 2.117 (a), Petitioner respectfully requests the denial of the Motion for Suspension.

Dated: May 10, 2010

Respectfully submitted,

/Gail Taylor Russell/

Gail Taylor Russell
Attorney for Petitioner
Taylor Russell & Russell, P.C.
10601 FM 2222
Building R, Suite 12
Austin, TX 78730
Phone: 512-338-4601
Email: gtrussell@russell-law.com

³ See Registrant’s Motion for Suspension of Proceedings, Paragraph 1.

⁴ The Trademark Trial and Appeal Board Manual of Procedure Chapter 502.02 (b) provides that “A brief in response to a motion, except a motion for summary judgment, must be filed within 15 days from the date of service of the motion (20 days if service of the motion was made by first class mail, “Express Mail”, or overnight courier).”

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposition to Registrant's Motion for Suspension of Proceedings has been served on Richard E. Swan, 171 West Street, East Bridgewater, MA 02379 and Stephen J. Holmes, Barlow, Josephs & Holmes, Ltd., 101 Dyer St., 5th Floor, Providence, RI 02903 by mailing said copy on May 10, 2010 via First Class Mail, postage prepaid.

By: /Gail Taylor Russell/
Gail Taylor Russell